

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds as follows:

The above issues raised by the respondent are considered jurisdictional and subject to review by the Appeals Board. See K.S.A. 44-534a(a)(2).

In his Preliminary Hearing Order, dated August 30, 1994, the Administrative Law Judge granted claimant's request for temporary total disability compensation and medical treatment. The respondent appeals, arguing that the claimant did not sustain a work-related injury on the date alleged because she did not seek medical treatment or notify the respondent of such accident until April 26, 1994.

Claimant testified that she notified her employer of her injuries the day after the accident. She further testified that she did not seek medical treatment until April 26, 1994, because she thought her symptoms would get better but they worsened. A friend of the claimant, Vivian Boyer, testified that she heard claimant's supervisor verify during a telephone conversation that the claimant had notified the supervisor about her work-related accident. The claimant introduced into evidence medical records from a chiropractor and an osteopathic physician verifying that she had medical treatment for neck and back pain. The medical records contain a description given to the doctors by the claimant that she hurt her back lifting a heavy trash bag at work.

After a review of the Preliminary Hearing evidentiary record, and arguments of the parties contained in their briefs, the Appeals Board finds, for preliminary hearing purposes, that the claimant has presented persuasive evidence that she suffered an accidental injury arising out of and in the course of her employment with the respondent. Additionally, claimant has proved that it is more probable than not that she notified the respondent of her on-the-job injury the day after her accident, which is within the ten day requirement of K.S.A. 44-520.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated August 30, 1994, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Brian Pistotnik, Coffeyville, KS
M. Doug Bell, Coffeyville, KS
John D. Clark, Administrative Law Judge
George Gomez, Director